

Message Text

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PAGE 01 STATE 005929

46

ORIGIN EA-10

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DRAFTED BY EA/J:RMDEMING:DPW

APPROVED BY EA - MR. GLEYSSTEEN

L/EA - MR. ROH

PM/ISO - MR. DWORKEN

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R 101536Z JAN 75

FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

C O N F I D E N T I A L STATE 005929

STADIS

E.O. 11652: GDS

TAGS: MARR, JA

SUBJECT: IE SHIMA SHOOTING CASE

REF: TOKYO 16829

1. STATE AND DOD HAVE REVIEWED LEGAL, POLICY, AND DOMESTIC US POLITICAL RAMIFICATIONS OF ACCEPTING YAMAZAKI'S PROPOSAL THAT US NOT EXERCISE JURISDICTION IN IE SHIMA CASE. NO FINAL DECISION HAS YET BEEN REACHED, BUT THERE ARE FACTORS WHICH WEIGH HEAVILY AGAINST USG AGREEING NOT TO EXERCISE PRIMARY JURISDICTION. THESE FACTORS INCLUDE: (A) GENERAL AGREEMENT AMONG LEGAL EXPERTS IN BOTH STATE AND DOD THAT CASE FALLS UNDER ARTICLE XVII, 3(A) (II) OF SOFA; (B) CONSENSUS THAT A WAIVER OF JURISDICTION IN A DUTY CASE WILL REQUIRE PRESIDENTIAL REVIEW AND CONSULTATIONS WITH CONGRESS, PARTICULARLY IN LIGHT OF GIRARD CASE AND COMMITMENTS MADE TO CONGRESS BY PRESIDENT EISENHOWER AT THAT TIME; (C) CONGRESSIONAL INTEREST IN THIS CASE IN PARTICULAR AND JURISDICTIONAL CASES IN GENERAL, COMPLICATED BY FACT THAT SECRETARY SCHLESINGER, IN A DECEMBER LETTER TO SENATOR PASTORE, REPORTEDLY STATED THAT USG WOULD NOT UNDER ANY CONDITIONS GIVE UP JURISDICTION IN THIS CASE.

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PAGE 02 STATE 005929

2. ABOVE CONSIDERATIONS DO NOT ENTIRELY RULE OUT A
DECISION TO GRANT WAIVER, BUT IT WOULD HAVE TO BE DEMON-
STRATED THAT FAILURE TO GRANT WAIVER WILL RESULT IN SERIOUS

AND LONG-TERM DAMAGE TO OUR SECURITY RELATIONSHIP WITH
JAPAN. BEFORE DECIDING WHETHER TO PURSUE THE CASE
FURTHER DEPARTMENT NEEDS EMBASSY'S BEST ASSESSMENT OF
LIKELY REACTION IN JAPAN AND ITS IMPACT ON OUR SECURITY
RELATIONSHIP SHOULD WE NOT AGREE TO YAMAZAKI'S REQUEST.

3. REPLY NEED NOT BE STADIS, BUT NO REFERENCE SHOULD BE
MADE TO THIS MESSAGE. KISSINGER

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